IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

Crl.MC.No. 200 of 2007()

CRIME NO.434/05 OF EZHUKONE POLICE STATION

PETITIONERS/ACCUSED:

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1. VIJAYA W/O. SURENDRAN PILLAI
   KIZHAKKEKARA PUTHEN VEEDU
   NEDUMANCAVU P.O. KUZHIMATHICADU
   KOLLAM DIST.

2. SURENDRAN PILLAI, AGED 50 YEARS
   DO. DO.

BY ADV. SRI.N.UNNIKRISHNAN

RESPONDENTS/COMPLAINANTS:

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1. JAYASREE W/O. SASIDHARAN PILLAI, AGED 36 YRS.
   'SRUTHI BHAVAN', NEDUMANCAVU P.O.
   KUZHIMATHICADU, KOLLAM DIST.

2. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 200 of 2007

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Dated this the 24th day of January, 2007

O R D E R

The petitioners are accused in a prosecution under Sections 420, 468 r/w. 34 I.P.C. Cognizance has been taken on the basis of the final report submitted by the police. Investigation commenced on the basis of a private complaint filed by the respondent herein, which was referred to the police under Section 156(3) Cr.P.C.

2. It is of relevance to say that a prosecution has been initiated by the second petitioner against the first respondent alleging commission of the offence under Section 138 of the N.I. Act. That prosecution is also pending. The petitioners have appeared before the learned Magistrate. The petitioners have come to this Court with this petition with a prayer to quash the proceedings under Section 482 Cr.P.C.

3. What is the reason? The learned counsel for the petitioners submits that the allegations raised against the petitioners are false and are only raised as a counterblast to the prosecution initiated under Section 138 of the N.I. Act. The prosecution is vexatious.

Continuation of the prosecution amounts to negation of justice. In these circumstances powers under Section 482 Cr.P.C. may be invoked, urges the learned counsel. The dispute is essentially one of civil nature.

4. I am unable to accept the contentions. It cannot be contended on the facts that the allegations, if accepted, would not amount to any offence. Allegations and counter allegations appear to have been raised in respect of the cheques in question in the S.138 prosecution and in the final report submitted to court. I am of the opinion that the petitioners must raise these contentions before the learned Magistrate at the appropriate stage and claim discharge/acquittal in the prosecution initiated against them. I am not satisfied that there are any such circumstance which would justify the invocation of the powers under Section 482 Cr.P.C.

5. This Crl.M.C. is hence dismissed. I may hasten to observe that I have not intended to express any opinion on merits. It shall be open to the petitioners to claim discharge/acquittal at the appropriate stage before the learned Magistrate.

(R. BASANT)
Judge

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